RECENT CASE NOTES

BILLS AND NOTES—DELIVERY OF INCOMPLETE INSTRUMENT—EXTENT OF AUTHORITY TO COMPLETE.—The defendants endorsed an accommodation note made "to the order of . . ." The person whose name the maker wrote into the blank as payee refused to discount the note. To effect a discount to the plaintiff, the maker therefore had the plaintiff add the words "or bearer." *Held* (two judges dissenting), that the plaintiff could not recover from the accommodation endorsers, as the insertion of "or bearer" was an unauthorized material alteration which avoided the note as to them under the Negotiable Instruments Law. *First Natl. Bank v. Wood* (1918, N. C.) 95 S. E. 140.

Negotiable paper completed before delivery to the accommodated party for purposes of negotiation falls under the general rule, and may not be altered. *Builders' Lime Co. v. Welmer* (1915) 170 Ia. 444, 151 N. W. 100. But where accommodation paper contains a blank for the name of the payee, the accommodated party is "presumed" to have authority to fill that blank for purposes of negotiation in any way consistent with the nature of a negotiable instrument. *Michigan Ins. Bank v. Eldred* (1870, U. S.) 9 Wall. 544; *Bank of Spartanburg v. Mahon* (1906) 75 S. C. 255, 55 S. E. 529; see also 1 Daniel, *Neg. Inst.* (6th ed.) sec. 142. The principal case turns on the court's interpretation of the extent and purpose of such authority. It is clear that the accommodated party may fill in the name of a payee. N. I. L. sec. 14. He may also turn the instrument into "bearer" paper by filling in the word "bearer," the name of a fictitious payee, or in the absence of express prohibition, his own name. See 1 R. C. L. 1027; 1 Daniel, *Neg. Inst.* (6th ed.) sec. 145. In both instances the single aim is to procure negotiation. With such negotiation, therefore, all authority to alter ceases. *Builders' Lime Co. v. Welmer, supra.* And so, until the instrument by such negotiation becomes a note, the authority should continue. *Cf. Douglass v. Scott* (1837, Va.) 8 Leigh, 43 (change of date before negotiation). To hold that the authority is "exhausted" by inserting the name of a payee is to hold that failure of negotiation to that one payee will, contrary to the intention of all the parties, defeat the purpose for which the transaction was entered upon. It seems hardly open to question that the dissent in the principal case represents the sounder view.

CHARITABLE CORPORATIONS—LIABILITY FOR TORTS—ELEVATOR ACCIDENT IN BUILDING OPERATED FOR PROFIT.—The plaintiff's decedent was a tenant in an office building owned by Vanderbilt University and used in part for the accommodation of its law school but occupied chiefly by tenants to whom offices were rented. To a declaration charging that the tenant's death was caused by the negligence of an elevator operator employed by the defendant University a demurrer was interposed on the ground that being an eleemosynary institution it was immune from liability for the negligence of its agents. *Held,* that the defendant was liable, with a *dictum* that a judgment for the plaintiff would be collectible only from the income of the office building or other property of the defendant not used for educational purposes. *Gamble v. Vanderbilt University* (1918, Tenn.) 200 S. W. 510.

The case contains an admirable review of the various theories upon which different courts have rested the generally recognized exemption of charitable corporations from liability for the torts of their agents. See also (1917) 26 YALE LAW JOURNAL, 791; 5 R. C. L. 374. Tennessee had previously adopted the "trust fund theory," which bases the charity's immunity upon the ground

that the payment of damages for torts would divert trust funds from the purposes of the trust and would tend to discourage possible donors to charities, to the detriment of the public welfare. *Abston v. Waldon Academy* (1906) 118 Tenn. 24, 102 S. W. 351 (the plaintiff being a student in the defendant academy). A number of states explain the exemption on the theory that beneficiaries of the charity assume the risk of negligent injuries. *Powers v. Homeopathic Hospital* (1901, C. C. A. 1st) 109 Fed. 294; *cf. Paterlini v. Memorial Hospital* (1918, C. C. A. 3d) 247 Fed. 639. This theory, of course, permits recovery when the plaintiff, as in the principal case, does not belong to the class of persons who enjoy the benefits of the charity. *Bruce v. Central M. E. Church* (1907) 147 Mich. 230, 110 N. W. 951; *Hordern v. Salvation Army* (1910) 199 N. Y. 233, 92 N. E. 626; *Marble v. Nicholas Senn Hospital* (1918, Neb.) 167 N. W. 208. While rejecting these distinctions and adhering to their own doctrine founded on public policy, the court asserts that "public policy is not a thing inflexible" and that distinctions must be made from time to time as sound reason may dictate. Under the circumstances of the principal case, public policy is deemed to demand the imposition of liability. A few authorities in accord are cited in the opinion. *Winnemore v. Philadelphia* (1902) 18 Pa. Super. Ct. 625; *Holder v. Mass. Horticultural Soc.* (1912) 211 Mass. 370, 97 N. E. 630. It is submitted that the result of the decision is sound and in accord with modern tendencies to restrict the rule of general immunity of charities.

CONFLICT OF LAWS—JURISDICTION—DEGREE AFFECTING FOREIGN REALTY.—In a suit brought before the United States District Court for the Southern Division of the District of Idaho, against a Nevada corporation, the plaintiff charged the defendant with using excessive quantities of water for irrigation in Nevada from a river which also supplied the plaintiff further down stream in Idaho. The federal court ordered, (1) that the defendant should not use more than a stated quantity of water, (2) that it should place water meters on its Nevada land to register the amount taken, and, (3) that the plaintiff should have the privilege of going on that land for the purpose of inspecting the meters. The defendant appealed on the ground, among others, that the court had no jurisdiction to enter such a decree respecting foreign land. *Held,* that the decree below was correct. *Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co.* (1917, C. C. A. 9th) 245 Fed. 9.

See COMMENTS, p. 946.

CONSTITUTIONAL LAW—ADMIRALTY—STATE WORKMEN'S COMPENSATION ACTS NOT APPLICABLE TO INJURIES WITHIN ADMIRALTY JURISDICTION—EFFECT OF AMENDMENT BY CONGRESS.—By consent or without objection from the respondents as to jurisdiction, the New York State Industrial Commission had made awards to employees in cases within the jurisdiction of admiralty, prior to the announcement of the decision in *Southern Pacific Company v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524, 61 L. Ed. 1086, Ann. Cas. 1917 E 900, discussed in (1917) 27 YALE LAW JOURNAL, 255. *Held,* that, under that decision, such awards were invalid, and that they might now be set aside, since want of jurisdiction of the subject matter could not be waived; also that admiralty jurisdiction extended not only to repairmen working on a ship anchored in navigable waters, but also to dockworkers employed under maritime contracts. *Sullivan v. Hudson Nav. Co.* (1918, App. Div.) 169 N. Y. Supp. 645.

A stevedore was injured while assisting in unloading a vessel. On the authority of *Southern Pacific Company v. Jensen, supra,* it had been held that compensation could not be awarded under the Louisiana Compensation Act. On rehearing it appeared that meanwhile (Oct. 6, 1917) Congress had amended